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P.L. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

FILE: B-190170

DATE: December 21, 1977

MATTER OF: A.W. Erwin and Son Contractors

DIGEST:

Where IFB specifies 60-day bid acceptance period, bidder must furnish bid guarantee effective for entire acceptance period plus such time as is reasonably necessary to enable Government to exercise its rights in the event bidder fails to comply with requirement to furnish payment and performance bonds, and bid guarantee in the form of an irrevocable letter of credit which expires prior to such period must be rejected as nonresponsive.

A.W. Erwin and Son, Contractors (Erwin) protests the rejection of its bid as nonresponsive by the Department of the Air Force. The bid was rejected because Erwin's bid guarantee--a letter of credit--expired prior to the expiration of the bid acceptance period.

Invitation for bids (IFB) F09607-77-1300 was issued on August 1, 1977 by the Base Procurement Office, Moody Air Force Base, Georgia for the procurement of billeting and family housing management services for the one-year period commencing October 1, 1977. The bids were opened on September 16, 1977 with Erwin the apparent low bidder.

The IFB required bidders to submit a bid bond or other bid guarantee equal to 20 percent of the bid price, and required that the awardee furnish payment and performance bonds within 10 days of receipt of final award documents. The IFB also specified a 60 calendar day bid acceptance period, commencing with the date bids were opened, e.g., bids were to remain available for acceptance by the Government to November 15, 1977. Erwin elected to furnish an irrevocable letter of credit as its bid guarantee, in

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lieu of a bond, as permitted by the IFB. The letter of credit, by its terms, expired on October 10, 1977, and as a result, the contracting officer rejected Erwin's bid as nonresponsive.

Erwin contends that his bank interpreted the IFB to mean that the letter of credit should not expire prior to the contract performance period (commencing October 1, 1977) set forth in the invitation, and that the bid was submitted in good faith, without intent to defraud or deceive the Government. Erwin also contends his bank was never contacted to inquire as to the validity and intent of the letter of credit. Alternatively, Erwin suggests that the expiration date in his letter of credit was a minor discrepancy which should have been waived by the contracting officer, and that in any event the contracting officer should have accepted the cashier's check offered by Erwin in the amount required after bid opening. Finally, Erwin claims that acceptance of his bid would result in a substantial saving to the Government.

The protest must be denied. The contracting officer's actions were consistent with our holding in B-163884, April 16, 1968, in which we said:

"The invitation required that offerors allow 60 days for acceptance; however the letter of credit by its terms was effective for only 30 days. Thus, the limitation in the letter of credit is in derogation of the condition in the invitation that offerors would not withdraw their offers for a period of 60 days from the date bids were opened.

* * * * *

"[A] bid guarantee requirement in an invitation for bids is a material part of the invitation and * * * a contracting officer cannot, as a general rule, waive a failure to comply with the requirement * * *." (Emphasis added)

Although protester claims that his bank interpreted the IFB to mean the letter of credit should not expire until the contract became effective October 1, 1977, and that the October 10 date "was selected to insure all bonding requirements were met," the fact remains that the IFB required a 60 day acceptance period and

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clearly and unequivocally provided that bidders allowing less than the number of calendar days specified for acceptance by the Government would be rejected as non-responsive. Even though the IFB provided for a contract period commencing on October 1, 1977, bidders were clearly on notice that award could be made any time up to November 15, 1977. Also, since the bid guarantee is also used to protect the Government in the event the awardee does not furnish the required performance and payment bonds, the letter of credit would have to remain available to the Government for the additional time reasonably necessary for the Government to exercise its rights in this regard. See 39 Comp. Gen. 619 (1960).

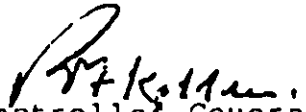
Accordingly, since the protester's letter of credit would not have been available after October 10, 1977, and since bid guarantee requirements are material requirements which the contracting officer cannot waive, the bid was properly rejected as nonresponsive. See McNamara-Luntz Warehouses, Inc., et al., B-188110, June 23, 1977, 77-1 CPD 448, affirmed on reconsideration, August 26, 1977 77-2 CPD 149. Although the Government must pay more when the low bid is rejected, to hold otherwise would tend to compromise the integrity of the competitive bidding system, 54 Comp. Gen. 271 (1974), 74-2 CPD 194, and in that regard, we have consistently held that the maintenance of the integrity of the competitive bidding system is more in the public interest than the pecuniary advantage to be gained in a particular case. Modern Moving and Storage, Inc., B-188223, May 2, 1977, 77-1 CPD 299.

Finally, with regard to the assertion that the protester's bank was never contacted to inquire as to the validity and intent of the letter of credit, we point out that it is a cardinal rule of formal advertising that a bidder may not be called upon after bid opening to explain the purpose of a material deviation to the advertised requirements,

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for to do so would confer on a bidder the option of accepting or avoiding award as its own interests dictate. For the same reason, a bidder may not be permitted to correct a nonresponsive bid to make it responsive, and thus the offer of a cashier's check was properly rejected. See Redifon Computers Limited--Reconsideration, B-186691, June 30, 1977, 77-1 CPD 463.

The protest is denied.


Deputy Comptroller General
of the United States